

ARKANSAS SUPREME COURT

No. CR 08-1460

WESLEY BARRINGER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 12, 2009

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
JEFFERSON COUNTY, CR 2002-480,
CR 2002-551, CR 2004-389, CR 2006-
1065, HON. BERLIN C. JONES,
JUDGE]

REMANDED.

PER CURIAM

A judgment entered on February 20, 2008, reflects that, as a result of the revocation of his probation or suspended imposition of sentence, petitioner Wesley Barringer was sentenced on a previous conviction of four counts of second-degree forgery, theft of property, possession of a controlled substance, use of paraphernalia to manufacture methamphetamine, and nonsupport, to an aggregate term of 120 months' imprisonment in the Arkansas Department of Correction. The judgment was not appealed, and the partial record before us contains no notice of appeal filed within the prescribed thirty-day period. *See* Ark. R. App. P.–Crim. 2(a). Petitioner has filed a motion for belated appeal of the judgment in this court under Arkansas Rule of Appellate Procedure–Criminal 2(e).

Petitioner avers that he asked his attorney, Mr. Greg Robinson, to file an appeal at the sentencing hearing and at a meeting at the jail the next day, but that Mr. Robinson refused to perfect the appeal and demanded additional payment. In keeping with our practice, Mr. Robinson was provided a copy of petitioner's motion and asked to provide an affidavit in response to petitioner's

allegations. Mr. Robinson has responded and disputes petitioner's claim that he advised Mr. Robinson that he wished to appeal the judgment.

The State will not penalize a criminal defendant by declining to consider his first appeal when counsel has failed to follow appellate rules. *Bond v. State*, 373 Ark. 257, ___ S.W.3d ___ (2008) (per curiam). While it is well settled that a defendant has the right to appeal the judgment, a belated appeal is not proper when a defendant waives his or her right to appeal by failing to inform trial counsel of his or her intent to appeal within thirty days of the entry of the judgment. *Henderson v. State*, 370 Ark. 521, 262 S.W.3d 143 (2007) (per curiam). Because petitioner alleges that he instructed Mr. Robinson to file an appeal, but counsel disputes the allegation, we remand to the trial court to conduct a hearing, take evidence, and provide findings of fact on the issue of whether petitioner advised Mr. Robinson to appeal within thirty days from the date the judgment was entered. Those findings should be provided to this court within sixty days of the date of this order, along with a transcript of the hearing.

Remanded.